THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.26755 OF 2007

DATED: 28-12-2007

BETWEEN

Zafar Javed,
S/o. Late Amjad Ali Khan,
Occ: Business,
R/o. 3-6-361/7,
Himayathnagar,
Hyderabad and others.

...PETITIONERS

AND

State of Andhra Pradesh,
Rep. by its Secretary (Revenue)
Secretariat, Hyderabad
and others.

...RESPONDENTS

ORDER:

Petitioners, four in number, residents situated on the Eastern boundary of the Old Gandhi Medical College seeks a Writ of Mandamus to declare the action of the respondent authorities in not taking any action on their representations dated 07.09.2007 and 06.11.2007 as illegal and arbitrary and to direct the respondents 1 to 6 to initiate appropriate action against the respondents 7 and 8 in carrying out illegal blasting in Old Gandhi Medical College premises, Basheerbagh, Hyderabad.

2. Petitioners submit that the first respondent allotted the old Gandhi Medical College campus (hereinafter referred to as 'site') vide G.O.Ms.No.35 Youth Advancement Tourism & Culture (PMU) Department dated

27.09.2006 to M/s. Pantaloon Retail (India) Limited for setting up of Urban Entertainment Centre Project in accordance with the terms and conditions set out in the G.O. Thereafter, the site was handed over to M/s. GSG Constructions Private Limited, which in turn entered into an agreement with DLF Laing O' Rourke (India) Limited – eighth respondent as a contractor for development of the site authorizing it to execute, construct, complete and maintain the works in accordance with the agreement dated 04.06.2007.

The eighth respondent in turn entered into an agreement with M/s. Associated Projects - seventh respondent on 07.08.2007 entrusting the following works:

1. Earthwork excavation without blasting at all depths including all lifts/leads etc., and in pits including providing protective safety barricading as required and shifting and compacting required excavated materials within the premises and carting of surplus excavated materials outside the premises up to 25 KM lead etc., complete with preparations of bed and sides dressing/trimming to the required dimension and profile as directed. (i) in all types of soft murram/hard murram & Loose boulders (not requiring blasting).

2. Earthwork excavation with blasting at all depths including all lifts/leads etc., and in pits including providing protective safety barricading as required and shifting and compacting required excavated materials within the premises and carting of surplus excavated materials outside the premises up to 25 KM lead etc., complete with preparations of bed and sides dressing/trimming to the required dimension and profile as directed. (i) In weathered or fractured rock or hard murram requiring controlled/muffled blasting including making necessary arrangement like covering with blasting mats, sand bags etc., including taking permission of local authority etc., all complete.

3. Excavation in hard rock with controlled/muffled blasting including making necessary arrangement like covering with blasting mats, sand bags etc., including taking permission of local authority etc., complete the carting of surplus excavated materials outside the premises up to 25 KM lead etc. The item shall include excavation in pits for foundation/trenches etc., (i) for depth to 3.5 Meters.

4. Excavation in hard rock with controlled/muffled blasting including making necessary arrangement like covering with blasting mats, sand bags etc., including taking permission of local authority etc., complete with carting of surplus excavated materials outside the premises up to 25 KM lead etc. The item shall include excavation in pits for foundation/trenches etc., (i)

For depth up to 3.5 Mtrs to 7.0 Mtrs.

5. Excavation in hard rock with controlled/muffled blasting including making necessary arrangement like covering with blasting mats, sand bags etc., including taking permission of local authority etc., complete with carting of surplus excavated materials outside the premises up to 25 KM lead etc. The item shall include excavation in pits for foundation/trenches etc., (i) for depth up to 7.0 Mtrs to 10.5 Mtrs.

6. Excavation in hard rock with controlled/muffled blasting including making necessary arrangement like covering with blasting mats, sand bags, etc., including taking permission of local authority etc., complete with carting of surplus excavated materials outside the premises up to 25 KM lead etc. The item shall include excavation in pits for foundation/trenches etc., (i) For depth up to 10.5 Mtrs to 14.0 Mtrs.

7. Excavation in hard rock with controlled/muffled blasting including making necessary arrangement like covering with blasting mats, sand bags, etc., including taking permission of local authority etc., complete with carting of surplus excavated materials outside the premises up to 25 KM lead etc. The item shall include excavation in pits for foundation/trenches etc., (i) For depth up to 14.0 Mtrs to 17.5 Mtrs.

8. Excavation in hard rock with controlled/muffled blasting including making necessary arrangement like covering with blasting mats, sand bags, etc., including taking permission of local authority etc., complete with carting of surplus excavated materials outside the premises up to 25 KM lead etc. The item shall include excavation in pits for foundation/trenches etc. I) For depth up to 17.5 Mtrs to 21.0 Mtrs.

The seventh respondent submitted an application dated 02.04.2007 to the Commissioner of Police – third respondent requesting permission for carrying controlled blasting at the site and the third respondent submitted a report to the District Collector on 19.06.2007 expressing no objection for granting control blasting permission with certain conditions and precautions mentioned therein.

3. It appears that the District Collector got enquired into the matter with regard to the grant of permission for controlled blasting not only with the Commissioner of Police but also with the District Fire Officer. After perusing both the reports of the Commissioner of Police dated 19.06.2007 and District

Fire Officer dated 20.06.2007 recommending for grant of no objection for proposed controlled blasting permission in favour of the seventh respondent, the District Collector vide letter No.C2/1894/2007 dated 27.08.2007 accorded permission subject to certain conditions and precautions mentioned at Sl.No.1 to 16 in the said letter. It is just and proper to extract the whole letter:

"GOVERNMENT OF ANDHRA PRADESH
(REVENUE DEPARTMENT)

Lr.No.C2/1894/2002

Office of the Collector
Hyderabad District
Dated:- 27-08-2007

To
The Managing Partner
M/s. Associated Projects,
Plot No.13, 3rd Floor
Road No.3, Beside Andhra Jyothi,
Banjara Hills, Hyderabad.
Sir,

Sub:- EXPLOSIVES ACT & RULES – Grant of Permission for controlled Blasting to M/s. Associated Projects – for blasting of Urban Entertainment Center, Gandhi Medical College – Reg.

Ref:- 1. The Manaing Partner, Associated Projects, Plot No.13, 3rd Floor, Road No.3, Beside Andhra Jyothi, Banjara Hills, Hyderabad Lr. Dated 2-4-2007.
2. Tahsildar, Himayathnagar, Lr.No.A/841/2007 dt 28-04-2007.
3. Commissioner of Police, Lr.No.L&O/M7/1721/dated 19-06-2007 received this office on 21-06-2007.
4. District Fire Officer, Hyderabad, Lr.No.Rc.No.1208/A4/2006 dated 20-06-2007.

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Kind attention is invited to the references cites, vide reference 1st cited the Managing Partner, M/s. Associated Projects, Plot No.13, 3rd Floor, Road No.3, Beside Andhra Jyothi, Banjara Hills, Hyderabad has requested to accord permission for controlled blasting at Urban Entertainment Center Project in Old Gandhi Medical College, Basheerbagh, Hyderabad.

The matter has been got enquired through the Commissioner of Police, Hyderabad City and the District Fire Officer and obtained their reports with specific recommendations. They have recommended for grant of no objection for proposed controlled Blasting permission to M/s. Associated Projects, Plot No.13, 3rd Floor, Road No.3, Beside Andhra Jyothi, Banjara Hills, Hyderabad for controlled blasting of the rocks at Urban Entertainment Center Project in old Gandhi Medical College, Basheerbagh with certain conditions and precautions which are as

follows:

1. Only submersible blasting should be carried out and the piece of the bolder should not emerge out of the ground.
2. The submersible blasting should be carried by Sri Kasi Reddy Srinivas of M/s. Minar Explosives, who is shot firer's permit holder.
3. All precautions should be taken to ensure that the tremors caused in the soil due to blasting should not effect the neighboring buildings.
4. Authorized Quantities of explosive only should carry and store and store at the blasting premises under safe custody as prescribed in rules.
5. No blasting should be carried out on the eastern side nearer to the existing (3) residential complexes, which one of the building is very old one.
6. No damage should be caused to the two Heritage buildings due to submersible blasting.
7. Suitable warning precaution should be maintained consisting of warning signs and available signals and all persons employed in the area shall be made fully conversant with such signs and signals.
8. The entry of public should be strictly restricted to the blasting area through public address system when blasting is taking place and any untoward incident, the agency should take up relief measures i.e. minority and other aspects.
9. Two Nos. of Co2 Fire Extinguishers of each 4.5 Kgs capacity and 5 Nos. of Water Co2 Fire Extinguishers of each 9 liters capacity should be made available at the site.
10. One First Aid Medical Box with its complete equipment should be made available at the site.
11. No smoking boards should be installed and scrupulously followed.
12. All workers and employees should be trained in first aid fire fighting.
13. Emergency telephone numbers should be displayed: 101, 9949991101 and 23449216 at blasting and excavation place.
14. The premises should always be kept clean and neat.
    No combustible waste should be allowed to accumulate in the premises.
15. Necessary precautionary measures should be taken at the time of blasting work as per the Explosives Act and Rules.
16. In view of location of heritage structure in that vicinity, the blasting to ensure safety to the structure which can be taken up in the presence of heritage committee supervision.

Keeping in view of the neighboring residential structures, at the time of blasting, the above precautions must take for the safeguard of the general public and to avoid untoward incidents.

In view of the recommendations made by the Commissioner of Police, Hyderabad City, and the District Fire Officer, Hyderabad, controller blasting permission is hereby accorded to M/s. Associated Projects, Plot No.13, 3rd Floor, Road No.3, Beside Andhra Jyothi, Banjara Hills, Hyderabad, till the completion of scheme.

Further, it is to inform that **violation of any condition above deem to be canceling of the Blasting permission and action will be taken as per the Explosives Act and Rules.**

Yours faithfully
Sd/-
Collector
Hyderabad

// Attested //

Sd/-
Superintendent
(Tahsildar Cadre)

4. A perusal of the aforesaid letter goes to show that in view of the neighboring residential structures, the aforesaid conditions have been imposed to safeguard the general public and to avoid untoward incidents. It was also informed to the seventh respondent that for violation of any of the conditions, the permission given for controlled blasting shall be deemed to be cancelled and action will be taken as per the Explosives Act and Rules.

5. The grievance of the petitioners is that the conditions have not been adhered to, therefore, they have made a representation dated 07.09.2007 before the Commissioner, Greater Hyderabad Municipal Corporation – fifth respondent complaining with regard to the threat of their structures getting damaged by reason of the activities taken up in the site and requested to take necessary steps to safeguard their rights. Thereafter, they have submitted another representation dated 06.11.2007 before the Circle Inspector of Police – sixth respondent explaining about the activities of the seventh respondent in adopting explosives contrary to the regulations contained in the Hyderabad Municipal Corporations Act, 1955 stating that in spite of several requests, the seventh respondent has been continuously

conducting blasting using explosives of very high intensity at a frequency of one hour three to four times. Whenever the blast is conducted the shocking waves pass through the ground rattling windows, doors and fall of articles with a deafening impact. The children and old are affected with no sleep with constant vibrations by reason of continuous work during the nights. Accordingly, they requested to initiate action to stop the use of explosives in the site.

6. The petitioners further submit that they have made an another representation before the District Collector on 12.12.2007 requesting stoppage of blasting and to intervene in the matter to safeguard their lives and property from high explosive blasts being undertaken by the eighth respondent company. They further submit that as no action has been initiated they were constrained to file this writ petition.

7. The learned Government Pleader obtained instructions with regard to the aforesaid allegations and placed a letter before this Court addressed by the Revenue Divisional Officer to the District Collector dated 15.12.2007. The said letter is extracted as follows:

"GOVERNMENT OF ANDHRA PRADESH
REVENUE DEPARTMENT
OFFICE OF THE REVENUE DIVISIONAL OFFICER, HYDERABAD DIVISION

Lr.No.J/6247/2007 Dated 15.12.2007

To

The Collector,
Hyderabad District.

Sir,

Sub: Explosives Act & Rules – Grant of Permission for controlled blasting to M/s. Associated Projects for blasting of Urban Entertainment Centre Project at Old Gandhi Medical College, Basheerbagh – Report called for – submitted – Reg.

Ref:-1. Collector, Hyderabad Lr.No.C2/1894/2007 dated 13-12- 2007 along with its enclosures.
2. This office Lr.No.J/6247/2007, dated 14-12-2007 addressed to the Tahsildar, Himayathnagar Mandal.
3. The Tahsildar, Himayathnagar Mandal Lr.No.A/841/2007,

dated 15-12-2007.

* * * * *

I invite the kind attention to the reference cited and submit that, I have inspected the site of Urban Entertainment Project at erstwhile Gandhi Medical College, Basheerbagh along with Tahsildar, Himayathnagar and enquired into the matter regarding violation of conditions specified in the permission given to M/s. Associated Projects, Hyderabad.

During the inspection I have interacted with the complainants residing in the eastern part of the project site who brought to my notice that some cracks have come up in their houses which are visible due to the blasting taken up by the M/s. Associated Projects, Hyderabad. Therefore, it appears that M/s. Associated Projects, Hyderabad have violated the conditions specified in the permission at Sl.No.(3), (5), (7) and (8) which is as follows:-

Condition No	Condition
3	All precautions should be taken to ensure that the tremors caused in the soil due to blasting should not effect the neighboring buildings.
5	No blasting should be carried out on the eastern side nearer to the existing (3) residential complexes, which one of the buildings is very old one.
7	Suitable warning procedure should be maintained consisting of warning signs and available signals and all persons employed in the area shall be made fully conversant with such signs and signals.
8	The entry of public should be strictly restricted to the blasting area through public address system when blasting is taking place and any untoward incident, the agency should take up relief measures i.e., monitory and others aspects.

As regards to the two heritage buildings, renovation work is taken up under the supervisions of representative from Archaeology Department.

With regard to other conditions imposed in the permission it requires technical opinion from the concerned departments.

This is for favour of kind information.

Yours faithfully

Sd/-
Revenue Divisional Officer
Hyderabad Division"

8. Sri E. Manohar, learned Senior Counsel, appearing for the respondents submits that they have not violated any of the terms and

conditions and if ultimately, the Collector comes to the conclusion that the cracks said to have come up on the houses of the petitioners situated on the eastern part of the site are due to blasting,
the respondents 7 and 8 will suitably compensate and will also ensure that none of the conditions imposed in the letter dated 27.08.2007 are violated while carrying out controlled blasting in the presence of any agency that may be appointed by the District Collector.

10. Sri D. Prakash Reddy, learned Senior Counsel, submits that according to the *prima facie* report submitted by the Revenue Divisional Officer to the District Collector, the respondents 7 and 8 have already violated the conditions 3, 5, 7 and 8 imposed and therefore, the permission granted by the District Collector is deemed to have been cancelled and they have no right to continue controlled blasting.

11. In view of the aforesaid rival contentions, I am of the opinion that to resolve the controversy, it is jut and proper for the District Collector to cause an enquiry pursuant to the representation filed by the petitioners on 12.12.2007 and in view of the letter of the Revenue Divisional Officer dated 15.12.2007 in consultation with the Commissioner of City Police and the District Fire Officer and review the matter keeping into account the factual situation over the site and the neighboring houses and pass appropriate orders in accordance with law, as expeditiously as possible, within a period of ten (10) days from the date of receipt of a copy of this order. Till such time the controlled blasting may not be permitted but the respondents 7 and 8 may go on with the work manually.

The writ petition is accordingly disposed of. There shall be no order as to costs.

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V. ESWARAIAH, J

December 28, 2007
Note: Furnish C.C. of the order by 31.12.2007

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